Memorandum

96 Act # 029
HQIRT 50/5.12

Subject	New Waiver Provisions, INA 212(i)	Date	JUN 20 1997

To
All Regional Directors
All District Directors (Including Foreign)
All Officers in Charge (Including Foreign)
All Port Directors
All Service Center Directors
All Training Academies (Glynco and Artesia)
All Regional Counsels
All Asylum Directors

From
Office of Programs
(HQPGM)

This memorandum addresses section 212(i) of the Immigration and Nationality Act (the Act), as modified by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). IIRIRA modified the section 212(i) waiver requirements relating to section 212(a)(6)(C)(i), as described below. This memorandum clarifies the implementation of the modifications imposed by IIRIRA and provides guidance in adjudication of cases filed prior to September 30, 1996, but not adjudicated until after the enactment of IIRIRA.

1. General provisions. Section 212(i) of the Act waives inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act, relating to fraud or material misrepresentation. This waiver was significantly modified by IIRIRA. The amendments to the waiver became effective on September 30, 1996.

Prior to the enactment of IIRIRA, an alien could obtain a discretionary waiver under section 212(i) based on his or her relationship as the spouse, parent, or son or daughter of a U.S. citizen or lawful permanent resident. Alternatively, the waiver was also available to an alien who could establish that the fraud or misrepresentation took place at least 10 years prior to the immigrant's application for visa, entry, or adjustment of status. In such a case, the alien was also required to show that his or her entry would not be contrary to the national welfare, safety, or security of the United States.

2. New eligibility and evidence requirements. Section 212(i) of the Act, as amended by IIRIRA, is significantly more restrictive. A waiver of violations under section 212(a)(6)(C)(i) is now authorized only for an immigrant who is the spouse,

Form G-2
(Rev. 1-2-80)

son, or daughter of a U.S. citizen or permanent resident. Immigrants who are the parents of citizens or lawful permanent residents no longer qualify for consideration.

The applicant must also demonstrate that refusal of his or her admission would result in extreme hardship to the qualifying relative. As is true with other case types requiring the demonstration of extreme hardship, the burden of proof rests with the alien to submit documentary evidence of the factors constituting extreme hardship to establish eligibility for the waiver. The alien must still also establish that discretion should be favorably exercised. In determining whether to exercise discretion in favor of the alien, the Service will balance adverse factors against the social and humane considerations presented by the alien.

There is no longer any alternative provision for waiver of a 212(a)(6)(C)(i) violation due to passage of time.

The waiver authority under section 212(i) does not apply to a finding of inadmissibility under 212(a)(6)(C)(ii).

3. Forms and procedures. Existing procedures for applying for waivers under section 212(i) using Form I-601, and for the administrative processing of such applications, will remain in effect until Form I-724 (Application to Waive Inadmissibility Grounds and Permission to Reapply) becomes available for use. Further instructions will be provided at that time.

4. Applications filed prior to September 30, 1996. According to the reasoning of the Attorney General in Matter of Soriano, 21 I&N ___ (Interim Decision No. 3289, BIA 1996), the provisions of any legislation modifying the Act must normally be applied to waiver applications adjudicated on or after the enactment date of that legislation, unless other instructions are provided. Since the IIRIRA amendments to the Act became effective on September 30, 1996, applications which were filed prior to September 30, 1996 but remained pending after September 30, 1996, will be adjudicated based on the requirements imposed by IIRIRA. If applications by a parent of a U.S. citizen or lawful permanent resident are received, the denial will include an explanation to the applicant of the change in the law making him or her ineligible for the requested relief. If applications lacking necessary documentation required by IIRIRA (e.g., evidence of extreme hardship) are received, the applicant will be advised of the new requirements and given the opportunity to bring the application into compliance with provisions of the modified Act.

Due to adjudicative workload and lack of prior guidance regarding this issue, the Service will not attempt to reopen all applications for section 212(i) waivers that were adjudicated in the interim period after enactment of IIRIRA but prior to the issuance of this memorandum. However, in appropriate cases, an application can be reopened and readjudicated pursuant to 8 CFR 212.7(a)(4).

5. Previously approved applications. Waivers under section 212(i) of the Act which were approved prior to September 30, 1996, in accordance with the statute in place at the time the waiver was granted, remain valid indefinitely except as provided in 8 CFR 212.7(a)(4).

6. If there are any additional questions, contact Sophia Cox, Adjudications Officer, Headquarters Benefits Division, at 202-514-5014.

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